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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Houston Date: JAN 28 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

IN BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Houston, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on August 21, 1989, in Mexico. The applicant's father, [redacted] was born in Mexico and never had a claim to U.S. citizenship. The applicant's mother, [redacted], was born in Mexico in November 1962 and became a naturalized U.S. citizen on April 30, 1998. The applicant's parents never married each other. The applicant was lawfully admitted for permanent residence on September 22, 2001. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The acting district director reviewed the record and concluded that the applicant was not legitimated before the age of 16 and does not meet the definition of the term "child" as defined in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1). The acting district director then denied the application accordingly.

On appeal, counsel states that legitimation is not an issue here because the applicant acquired automatic citizenship through his U.S. citizen mother. Counsel asserts that since 1957 Congress has consistently stated that "an illegitimate child would, in relation to his mother, enjoy the same status under immigration laws as a legitimate child." S. Rep. No. 1057, 85th Cong., 1st Sess., 4 (1957).

Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthday as of February 27, 2001. The applicant was 11 years and 6 months old on February 27, 2001.

Stepchildren and children born out of wedlock who have not been legitimated are not included in the definition of the term "child" as used in Title III. Therefore, unless such children are adopted or legitimated, they will not be eligible for benefits under the CCA. The applicant, as a child born out of wedlock, is not eligible for the benefits of the CCA.

Section 320(a) of the Act, effective on February 27, 2001, provides, in part, that a child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

(1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

(2) The child is under the age of eighteen years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet that burden. Therefore, the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over his place of residence.

ORDER: The appeal is dismissed.